

Remarks / Discussion of Issues

In the non-final Office Action dated March 16, 2009, it is noted that claims 1-18 are pending, and claims 1-18 stand rejected. Claims 1, 6, and 11 are independent claims. Claims 2-5 and 16-18 depend ultimately from claim 1; claims 7-10 depend from claim 6; and claims 12-15 depend from claim 11.

By this response, claims 1 and 3-18 have been amended to clarify certain aspects of the subject matter. Independent claims 1, 6, and 11 include the features of claim 2. Claim 2 has been canceled. No new matter has been added.

Rejections under 35 U.S.C. §112 and 35 U.S.C. §101

Claims 4 and 14 stand rejected under 35 U.S.C. §112, second paragraph, because the phrase "i.e." allegedly renders the phrase indefinite. Applicants herein amend claims 4, 5, and 14 by removing these phrases from their respective claims. Therefore, Applicants respectfully requests the withdrawal of the rejections to claims 4 and 14 under 35 U.S.C. §112, second paragraph.

Claim 16 stands rejected as being indefinite because the claim allegedly does not set forth any steps involved in the method/process. Claim 16 is also rejected under 35 U.S.C. §101, alleging that the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process. Applicants herein amended claim 16 to clarify that the transmission system of claim 1 employs Standard Universal Mobile Telecommunication System (UMTS) as the transmission system. As such, claim 16 properly further defines the method of claim 1. Accordingly, Applicants respectfully request the withdrawal of the rejection to claim 16 under 35 U.S.C. § 112 and 101.

Rejections under 35 U.S.C. §102

Claims 1, 3, 4, and 17 stand rejected under 35 U.S.C. §102(e) as being anticipated by US Patent 7,310,670 to Walbeck et al. (Hereinafter "Walbeck"). This rejection is respectfully traversed.

In order for a reference to anticipate a claim, the MPEP 2131 requires the reference to teach every element of the claim.

Applicants' claim 1 recites:

A method for accessing a medium by a multi-channel device, in which the medium comprises a transmission system having at least two channels, the method comprising:
transmitting a message including a preamble, a header (PR) and a succeeding control or data section, and
repeating the transmission of the preamble and header (PR) of the message in parallel on all channels.
Emphasis added.

The Office Action alleges that the features of claim 1 are disclosed by Walbeck, with the exception of the emphasized feature. The Office Action on page 6 admits that Walbeck is silent on the preamble and header being repeated in parallel. As such, claim 1 is not anticipated by Walbeck under 35 U.S.C. §102(e). Thus, Applicants respectfully request the withdrawal of the rejection of claim 1 under 35 U.S.C §102(e). Applicant discusses the feature repeating the transmission of the preamble and header (PR) of the message in parallel on all channels below.

Claims 3, 4, and 17 depend from claim 1 and inherit all of the respective features of allowable claim 1. Thus, claims 3, 4, and 17 are patentable for at least the same reasons discussed above with respect to independent claim 1, from which they depend, with each dependent claim containing further distinguishing patentable features.

It is respectfully submitted that the rejection of claims 1, 3, 4, and 17 has been overcome. Hence, withdrawal of the rejection under 35 U.S.C. §102(e) is respectfully requested.

Rejections under 35 U.S.C. §103

Claims 2 and 18 stand rejected over Walbeck in view of US Patent 6,215,798 to Carneheim et al. (hereinafter "Carneheim"). Claim 5 by Walbeck in view of US Patent 7,016,676 to Walke et al. (hereinafter "Walke"). Claim 16 by Walbeck in view of US Patent 7,415,046 to Beckman et al. (hereinafter "Beckman"). Claims 6, 7, 9, and 10 by

Walbeck in view of US Patent 4,797,879 to Habbab et al. (hereinafter "Habbab"). Claim 8 by Walbeck, Habbab and Walke. Claims 11, 12, and 14 by Walbeck in view of US Patent 7,289,529 to Sherman (hereinafter "Sherman"). Claim 13 by Walbeck, Sherman and Habbab. Claim 15 by Walbeck, Sherman and Carneheim.

Applicants respectfully traverse these rejections.

Independent claims 1, 6, and 11 are method claims for accessing a medium by a multi-channel device. Each independent claim includes distinguishable patentable features. The features of claim 2 wherein the preamble and header are repeated on all channels have been incorporated into claims 1, 6, and 11.

The Office Action on page 6 alleges that Carneheim at column 3, lines 45-50, discloses the preamble and header are repeated in parallel on all channels. Applicants respectfully disagree.

MPEP 2142 states:

"[r]ejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2c 1385, 1396 (2007) (quoting Federal Circuit statement with approval).

Carneheim at column 3, lines 45-50 appears to disclose data frames that are sequentially assigned to parallel channels. Applicants submit that a person having ordinary skill in the art would know that a data frame of Carneheim is distinct from a preamble and header of the message of Applicants' claim 1. The preamble and header portion of a message is distinct from, and often precedes, the data portion of the message. As such, a preamble and header of a message is not the same as, or render obvious, a data frame.

In addition, Carneheim's apparent teaching of sequentially assigning data frames to parallel channels is not the same as, or render obvious, repeating the preamble and header in parallel on all channels as in Applicants' claim 1. Although Carneheim apparently discloses sequentially assigning data frames to parallel channels, Carneheim does not teach, disclose, or suggest the preamble and header of

the message are repeated in parallel on all the channels. Because the cited references do not teach or suggest every claimed feature, it is respectfully submitted that the rejection is obviated and should be withdrawn.

Furthermore, the Office Action alleges that Carneheim discloses Applicants' method in claim 1. However, Applicants respectfully submits that this is simply a conclusory statement without providing any supporting evidence or factors as required by MPEP section 2142.

Carneheim appears to disclose a method for synchronizing data frames from a wide bandwidth data stream which is divided up and transmitted across parallel channels in a telephone network. Data frames are apparently synchronized by sequentially assigning data frames to parallel channels which are then transmitted across a telephone network. Upon arrival at the destination, a receive synchronizer apparently extracts a synchronization bit from each data frame, compares unique sequences, and identifies the position of each unique sequence. The results are apparently used to align the data frames in the parallel channels and then the original bandwidth stream is reconstructed. Column 3, line 35-column 4, line 24.

Applicants respectfully submit that Carneheim's method for synchronizing data frames is distinct from, and does not render obvious, Applicants' method for access to a medium by a multi-channel device. Although Carneheim apparently discloses a method of synchronizing data frames by sequentially assigning the data frames to parallel channels, Carneheim does not teach, disclose, or suggest a method for access to a medium by a multi-channel device. Furthermore, the Office does not provide any explanation or supporting evidence as to why one of ordinary skill in the art would believe that a method of sequentially assigning data frames to parallel channels can be rearranged to render obvious applicant's claim 1.

The Office is simply providing conclusory statements to support the combination of references and the further modification of the data frames to parallel channels in making this rejection. Nowhere is there any suggestion in either reference or with the knowledge of one ordinarily skilled in the art to support these conclusory statements.

KSR makes clear that rejections on obviousness cannot be sustained by mere conclusory statements; instead KSR requires that an Examiner provide "some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness." (KSR Opinion at p. 14). An Examiner must "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does," (KSR Opinion at p. 15). And, the Examiner must make "explicit" this rationale of "the apparent reason to combine the known elements in the fashion claimed," including a detailed explanation of "the effects of demands known to the design community or present in the marketplace" and "the background knowledge possessed by a person having ordinary skill in the art." (KSR Opinion at p. 14). Anything less than such an explicit analysis may not be sufficient to support a prima facie case of obviousness.

Applicant submits that the Office has not presented a prima facie case of obviousness. Thus, Applicants respectfully submit that claim 1 is in condition for allowance and respectfully request early allowance of claim 1.

Dependent claims 3, 4, and 17 depend from allowable independent claim 1 and inherit all of the respective features of claim 1. Thus, claims 3, 4, and 17 are patentable for at least the same reasons discussed above with respect to each independent claim, from which they depend, with each dependent claim containing further distinguishing patentable features.

Independent claims 6 and 11, while different from claim 1, include features which have similar distinguishing features as pointed out above. The Office Action cites Habbab as allegedly teaching or disclosing features in claim 6 which are admitted as lacking by Walbeck. However, Habbab does not cure the deficiencies of Walbeck as noted with respect to claim 6. The Office Action cites Sherman as allegedly teaching or disclosing features in claim 11 which are admitted as lacking by Walbeck. However, Sherman does not cure the deficiencies of Walbeck as noted with respect to claim 11. Thus, the analysis of these independent claims is substantially analogous to the analysis of claim 1, as presented hereinabove. To avoid repetition, claims 6 and

11 will not be discussed in detail with the understanding that they are patentable at least for the same reasons as claim 1.

With respect to the remaining dependent claims, the Office Action cites additional references as noted above. However, each of dependent claims 3-5, 7-10, and 12-18 depends from allowable independent base claim and inherits all of the respective features of the independent base claim. The cited references do not cure the deficiencies as noted with respect to the independent claim. Thus, each dependent claim is patentable for at least the same reasons discussed above with respect to its independent base claim, from which it depends, with each dependent claim containing further distinguishing patentable features.

It is respectfully submitted that the rejections of claims 1 and 3-18 has been overcome. Hence, withdrawal of the rejections and early allowance of the claims are respectfully requested.

Conclusion

An earnest effort has been made to be fully responsive to the Examiner's correspondence and advance the prosecution of this case. In view of the foregoing, it is respectfully submitted that all the claims pending in this patent application are in condition for allowance.

If there are any errors with respect to the fees for this response or any other papers related to this response, the Director is hereby given permission to charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account No. 14-1270.

Respectfully submitted,

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